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# The Solari Report

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## COVID-19 Regulations & Your Mortgage with Marie McDonnell



Mortgage Servicing:  
Covid-19 Update with Marie McDonnell

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**C. Austin Fitts:** Ladies and gentlemen, welcome to *The Solari Report*. It's a great privilege to have Marie McDonnell, who is a mortgage fraud and forensic analyst, return with us. She is the president and CEO of McDonnell Analytics, which is a litigation, support, and research firm. She also has helped some *Solari Report* subscribers with their mortgages and tricky situations. So, she is an incredible resource. Her firm offers all sorts of securities research and foreclosure forensic support, including attorney general courts, government agencies, and she has seen many interesting litigations.

We had Marie talk with us about mortgage originations and how to make sure to originate your mortgage so that you don't get defrauded, and you achieve what you intend to achieve. Then I had her come back to talk about mortgage servicing because you can do your origination correctly, and you can still run into trouble on servicing.

In fact, it is very important before you originate a mortgage that you know where the servicing troubles come in so that you can avoid those types of companies or institutions. It is not always possible, but it helps to know.

When the CARES Act passed, and I heard about the forbearance programs, I knew how much harm had been done to people through forbearance programs and forbearance fraud during the bailouts because Marie briefed us all about it and had some incredible case studies. I briefly examined them, and I hadn't even read the Act yet, and sent her an email and asked, "Marie, will you come back on to *The Solari Report*? There is going to be trouble in the mortgage market, and we need to protect our subscribers from it."

So, Marie, you immediately said yes. Thank you so much for doing this.

**Marie McDonnell:** You are so welcome, Catherine, and hello everybody.

I loved your introduction there. In particular, you know as well as I do that any time there is an interruption in a mortgage loan account as it is serviced, whether that be a change in the escrow amount due to perhaps an increase in real estate taxes and homeowners insurance, or a change in an interest rate and monthly payment; anytime there is a change that increases the risk that something could go wrong.

Of course, my assistant, Stephanie, and I have been working for years now – since the mortgage meltdown in 2007 and the ensuing financial crisis of 2008 – assisting people who fell behind in their mortgage payments. Back then, during the subprime mortgage crisis, many of those loans were designed to implode at a certain point when interest rates and monthly payments would jump up from their initially discounted teaser rates to the market rate. Of course, this caused a cataclysmic problem for people, and even the mortgage market. That led to the bailouts and everything.

Looking back now on what this 60- to 90-day lockdown due to the COVID-19 pandemic is causing for residential mortgage consumers in particular, and on the business side, as well in commercial. I would have to go from catastrophic to astronomical problems by a head because there is so much disruption, so many people who have been furloughed from their jobs due to the lockdown, and most people are not going to be able to make up that income.

Then you have the people who can't go back to the same job because perhaps that business didn't make it. So, the troubles we see ahead are just going to be overwhelming. We know, of course, from working directly on behalf of our clients with their mortgage servicing companies that it is not at all easy to implement a forbearance plan or, in particular, a loan modification agreement, and have that be feasible.

I can't wait to talk with you about this, but I don't know where to start.

**Fitts:** I'm going to step you through it because I understand the nature of what we are grappling with. There is an important thing to remember, and I want to stress this before we really dive in.

Even if you make a deal with your servicer, and it's a deal reflected under the law, it doesn't mean that they are going to respect it, and it doesn't mean that you are going to get yourself in a huge, complicated mess that is going to take you even more time and money to work out.

Making sure that you have a legal deal that is enforceable and is enforced is much more work than you think it is. Is that fair to say?

**McDonnell:** That is an understatement. It's all about the paperwork. You know from the two sessions we've had so far – both on the origination side and on the mortgage servicing side – that it is all about maintaining a complete primary source record of all your loan origination documents and all your mortgage servicing documents. I can't stress enough how important it is after you pay your monthly mortgage bill to keep that statement. That is primary source evidence.

Most of the mortgage statements now, which I think is by law, have to have a very detailed accounting of what is due, broken down into how much of your monthly payment will be applied to principal, to interest, and to escrow items. That is generated into real time by the computer system. They will also reflect your last payment – how and when it was applied.

So, those monthly mortgage statements are like gold to me because all kinds of complicated situations can arise.

For example, when the mortgage servicing rights are bought, sold, and transferred to another entity, they may not transfer the entire servicing record up to that point in time. That means the only individual who has evidence that they have made their payments and how those payments were applied is going to be the consumer.

I keep 'hammering' this home, but especially now going into the forbearance relief programs that are being offered by virtually all banks and mortgage servicers who have federally-backed mortgage loans. That would mean a loan that is guaranteed or insured by the Federal Housing Administration, the Veterans' Administration, or the USDA Rural Housing and those loans acquired by Fannie Mae and Freddie Mac, which are all federally-backed mortgage loans; those are the loans that the CARES Act covers.

**Fitts:** Let me say one other thing, and then start again with the CARES Act, and go from there.

The only enforceable deal you have is one that you can document. When I say 'document' I mean 'document' even if your house burns down or Katrina

happens to come to your neighborhood. So, you not only need documents, but you need redundant documents, and you need to make sure that no matter what happens, you can access those documents.

I have my documents in multiple places.

Think of this as you being in a war, and the only way that you are going to win that war is if you have documented evidence and proof that the deal is what you say the deal is. If you don't, then the deal is off.

**McDonnell:** That is absolutely right, and I cannot tell you how many times someone will call us, and they will feel very upset and betrayed because when they took out their loan, the mortgage broker or loan officer promised them, "You are going to take out this loan on these terms right now, and in six months we will refinance you and get you a better deal." That never happens, and then people find themselves trapped in an unaffordable mortgage loan transaction that becomes disastrous for them.

Oral promises will mean nothing in real estate; this is a real estate secured mortgage loan. In real estate, the law requires that everything must be in writing. So, oral representations or agreements are not going to be sufficient.

Everything must be documented in writing and maintained in both a paper file and in an electronic file. Hopefully, you will have back-up for that electronic file as well.

**Fitts:** I've run into so many people in this situation. I'll never forget driving down the street in New Orleans two years after Katrina and having a long talk with a cab driver. He said, "They blew the levies. It's not the first time. They did it in the 1970's, too."

I said, "Were you able to get the insurance on your house?"

He said, "Yes because I learned in the 1970's that the only people who got their money had a copy of their documents. So, I always have redundant copies of my documents, including not in my house."

So let's begin. Let's turn to the CARES Act, which is the Coronavirus Aid Relief and Economic Security Act. That was the first package that passed Congress in March, with so much of the stimulus dealing with or addressing COVID-19. In it, it had the provisions to help people with their mortgages.

Describe to us what was in the CARES Act.

**McDonnell:** It is very important to point out that the CARES Act applies only to Federally-backed mortgages. So, if you have a loan that perhaps you took out in 2005 or 2006 or 2007, and it was sold to a Wall Street investment bank and securitized, the CARES Act does not apply to you.

**Fitts:** If it was securitized through Freddie or Fannie, would it apply?

**McDonnell:** Yes, it would. So by federally-backed mortgages, that will include FHA loans, VA loans, USDA, and those that are owned by Fannie Mae and Freddie Mac.

Initially, the CARES Act provided for a 60-day foreclosure moratorium which began on March 18<sup>th</sup> and expired May 17<sup>th</sup>. Just before the expiration in mid-May, Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development (the FHA) extended the suspension of foreclosures and evictions through to, at least, the end of June. We will see what happens at the end of June. I think that it is going to be extended again because no one has had a chance to get out of this lockdown and get back to work.

It's very interesting here at the office. It has been as 'quiet as a mouse'. I do believe it is because of the CARES Act and the fact that people feel reasonably comfortable that any foreclosure that had been initiated is prohibited during this period of time for evictions. Usually people are calling us here because they have an emergency.

Unfortunately, people don't seem to be motivated to manage their mortgage until they have some sort of a problem. So that is very interesting.

I totally expect that by the fall, we will be swamped with calls for assistance because at some point, the 'music stops'.

**Fitts:** Although they have enough incentive to delay it until after the election.

**McDonnell:** Yes, they do.

**Fitts:** That is the danger that they keep rolling in, and this thing keeps getting bigger and bigger and bigger.

**McDonnell:** It's true, and here is why and this is what we know. We have learned so much, of course, from helping people who fell into default as a result of the financial crisis of 2008.

By the way, all those foreclosures are still not yet through the system. There was so much pent-up foreclosure activity that the servicers and their foreclosing law firms had to find a way to delay the inevitable. So, it's been like a drip, drip, drip of foreclosure and eviction activity.

We have people who have not paid their loans for nine or ten years. They are still in foreclosure, and nothing is happening. What has happened – fruitlessly – is they are encouraged to apply for a loan modification. They send in the paperwork, the paperwork gets lost or it is incomplete, they are denied, and it starts all over again with this whole process. So the delay is just interminable.

**Fitts:** You had people who were eligible for forbearance during the financial crisis. Then when they exercised it, they got 'caught in a ringer'. Is that correct?

**McDonnell:** Absolutely, and there has been plenty of litigation around that.

Congress acted to develop loan modification programs under the Home Affordable Modification Program initiative (HAMP), which was promoted primarily by the government-sponsored enterprises Fannie Mae and Freddie Mac.

The process was that before the mortgage servicing companies would implement a permanent loan modification, they did a little 'test drive', which they called the TPP program. So, this was a temporary situation where the servicer would have the borrower make three consecutive monthly payments in

an amount they would then approve as a permanent loan modification.

We have people who made those TPP payments, and then they were denied for a loan modification. Or just as they were to implement the modification, the loan would be transferred for servicing, and the new servicer somehow was unaware that there was a new deal. That might have even been consummated in terms of a loan modification agreement that may have been recorded in the land record office.

These are the types of problems that we can foresee because the mortgage servicing companies do not have sufficient staffing or trained staffing or staff with authority to make decisions to handle the sheer volume of requests for loan modifications that inevitably will follow these temporary forbearance plans.

So, my advice to your listeners and readers is to make sure that you keep a complete mortgage loan file, which will consist of your monthly mortgage statements, your proof of payments, – whether you’ve made those payments online or by check or by Western Union or however you are making those payments – and keep your tax bills and your homeowner’s insurance bills and all correspondence to and from your mortgage servicing company. If you have maintained your file and later, you run into a problem with your servicer and you don’t get the deal you were supposed to get, we can reverse engineer the entire loan servicing record.

**Fitts:** Let’s stop and explain to people what that means. You can do this as long as you notify that you are doing this. You can keep a recording; you can record your phone calls. That is number one. Number two, if you make an oral or verbal deal, you can follow up by writing them and confirming in writing that this was the deal that you agreed to orally.

An oral deal is legal, but you must document it. So if you have a recording, and if you have followed up with correspondence, then you have it locked in. Is that not correct?

**McDonnell:** Yes it is. Absolutely.

**Fitts:** So when Marie says to keep a complete file, complete means including

all those things. One of the things that went wrong during the financial crisis that you ‘drove home’ in our last conversation was the fact that they would take monies to pay things out of the escrow, and then as the escrow dropped down, you could end up with defaults and fees and all sorts of a mess. Those fees would add up, and then you are trying to catch up.

One of the things that I think you need to do during a forbearance period is to be very clear about what is happening to your escrow. Is that not correct?

**McDonnell:** If you were in my class, I would give you an A+++. Yes, that is correct. The number one trigger for causing a default has to do with changes to the escrow account.

In the materials that I provided to you for this COVID-19 update, it is clear that the mortgage servicing companies will continue to be obligated to advance real estate tax payments and homeowner’s insurance payments and anything that they are escrowing that could create a risk to the investor; they have to advance those payments.

**Fitts:** I got an announcement recently, and I haven’t confirmed it, that Nashville was raising its property taxes 30+%. So, let’s assume that I have an escrow and my municipality – under the pressure of what is going on – raises the real estate taxes by a significant amount. Can the servicer take that increased amount out of the escrow and surprise me as a result?

**McDonnell:** What they have to do in that case is prepare what is called an Annual Escrow Account Disclosure Statement, and they have to project the increase to your monthly mortgage payment that will result from the increase by the taxing authority. And they have to send this to you at least 30 days in advance, I believe, of your next monthly payment. Obviously, the amount that you are currently paying for escrow items, you will not know that it’s increasing during your COVID-19 forbearance period, but it is increasing.

When it comes time to ‘pay the piper’, you are going to have payment shock because you have not been prepared for this increase.

This is why the correspondence to and from your mortgage servicing company

is going to be so important to keep, and then you can prepare your budget accordingly.

**Fitts:** Under the CARES Act, was there an agreement or a stipulation if I received several months of forbearance? Is there an agreement about when I pay that back? Is it at the end of the forbearance period? Is it tacked onto the end of the mortgage? What is the plan? What was the plan stipulated by legislation as to what I am required to do after I get two months of forbearance?

**McDonnell:** The repayment options are going to change. But to start with, the initial forbearance period is a three-month suspension of your entire mortgage payment.

Actually, I think it is 180 days, after which you can then renew for another 180-day period. I would presume that would be for an individual who lost their job and can't find another job and needs nearly a full year of forbearance.

To my way of thinking, the FHA has the absolute best concept for handling a situation like that. This has been Federal law for decades under the National Housing Act. So for an FHA insured consumer who has fallen behind in their payments, up to 12 months of payments can be set aside and tacked on to the mortgage obligation as a non-interest-bearing loan that does not have to be repaid until you pay off the loan, either through a sale of the property or a refinance. That is called Partial Claim Relief.

It is my belief that the entire mortgage industry should adopt that concept to deal with this fallout from the COVID-19 lockdown because people are simply not going to be able to recover that fast.

**Fitts:** Let me mention one thing: If you're FHA, you can get Ginnie Mae to do what you need, or you can get Fannie and Freddie to do what you need. Obviously, if you are Fannie and Freddie, you can get yourself to do what you need.

The problem that you have for the rest of the mortgage industry is that they are locked into mortgage-backed security provisions, and they may not have the legal ability to do that. Is that not correct?

**McDonnell:** That is absolutely true because your mortgage note and your mortgage (or deed of trust) is really not what governs the servicing of your loan. To a certain extent it is, and, of course, your mortgage will contain provisions from the Real Estate Settlement Procedures Act with respect to escrow accounts and so forth, so you have some protection there. But it is a document called the Pooling and Servicing Agreement, which is an agreement between the securitizing entity (the depositor/the master servicer) and the trustee for the securitization trust that is going to determine how your mortgage loan is to be serviced. So actually, the borrower is cut out of having any say in that.

**Fitts:** Right, so it gets much more complicated than when you are with all the private entities. And if you have PMI, it's even that much more complicated.

**McDonnell:** Yes, that's right.

**Fitts:** Let me ask an unfair question: When most people try to deal with their servicers in this kind of forbearance situation, do you expect a very high percentage of them to run into very frustrating – if not financially tricking – circumstances?

**McDonnell:** This COVID-19 forbearance situation is very different from what we've seen in the past because national housing policy has shifted for the first time in my memory to be very friendly to the consumer.

**Fitts:** So they say.

**McDonnell:** Right, so they say. Don't worry; there is a caveat coming.

This is during the initial forbearance period. These three months of forbearance agendas are happening very swiftly and efficiently by the banks and mortgage servicers because they can implement that change electronically without much of any human intervention.

The problem will come when the forbearance periods end, and now you are facing the repayment plan options. This is where the servicers will have a lot of discretion in terms of how they structure that repayment plan. I can tell you

from looking at thousands of repayment plans and loan modification offers following the financial crisis, most of those structures were more oppressive than the original terms of the loan.

Then there is another thing that I discovered in doing the research for our conversation today with respect to what servicers probably are not telling their customers who are seeking a forbearance under the COVID-19 CARES Act. That is if you are already in a loan modification agreement and you apply for forbearance, you might lose some of the benefits of that loan modification which requires that you do not default.

Also, if you apply for forbearance and have a home equity line of credit, will not be able to draw from that line of credit.

**Fitts:** During the period of forbearance?

**McDonnell:** Correct.

Also, if you are in forbearance, you will not be able to refinance or obtain any other type of financing until you have repaid what was forborne.

**Fitts:** Let me tell you why this is so important to understand. I had no idea that was the case.

You have to remember that coming out of the election, if you look at what is happening in terms of technology and the implementation of different kinds of technology, you have an enormous amount of money gathering to buy up real estate and reengineer places. It's all part of the smart city effort. So, you have real estate developers targeting many areas and looking to pick up real estate cheap.

Now you're talking about a situation where an enormous number of homeowners could easily get themselves into a box, and given that you have big developers who are big campaign contributors coming into buy, there is going to be political pressure to keep everybody in a box.

If you can't refinance, you will be cornered.

**McDonnell:** That's right. Until I did the research in preparation for this discussion, I did not know that. No other source of information listed this.

**Fitts:** So, you would be much better off taking money down on your home equity line and using it to pay your mortgage.

**McDonnell:** That is exactly right, yes you would.

**Fitts:** Wow! I'm telling you that this is a war.

**McDonnell:** It is a war.

**Fitts:** It is absolutely a war. Part of it is just drowning on our own complexity, but there is definitely a war going on.

Every time I think I've seen every trick, I talk to you and say, "No, wait. There's more."

**McDonnell:** And every time that I think I've seen it all, there is a new one. Regulations just can't keep up with the inventiveness of the human mind motivated by greed.

What I see ahead is another tremendous transfer of wealth. That is what we are looking at here.

**Fitts:** If you look at the real estate developers who are coming in to buy right now, the Fed is putting \$1 trillion a day into the repo market. Some of that is obviously rollovers, but if you look at the amount of stimulus that is 'flying out' from the Fed, the M1 money supply and the M2 money supply are up 21% and 33% for the last year. That is all money that is being printed essentially at a 0% cost of capital, and it is coming in to buy away from you.

The average credit card holder in America is paying 15.99% on their credit card. They are paying less on their mortgage, and there are clearly refinancing options available. But if you've had your business wiped out or you've lost your job and get caught in a corner, they are coming in with 0% cost of capital to pick up

your real estate cheap.

**McDonnell:** Absolutely.

**Fitts:** It's scary.

**McDonnell:** It's so interesting. I've been thinking about potential solutions since this whole COVID-19 pandemic, lockdown, and CARES Act have been implemented. The first thing that came mind – and I would love to hear your thoughts on this – is that we will have to do what Iceland did in response to the 2008 crisis and have a jubilee.

**Fitts:** Be careful. Remember that all these mortgages have been sold to our pension funds. So, when a group of people get together and steal a great deal of money, then the solution is that we destroy all the assets in our pension funds, which makes them even richer. That is not a plan.

My preference, by far and away, is using our pension funds and teaming up with the local banks. We buy all this paper and refinance out into our own vehicles because the other problem in my neighborhood is that all the savers are earning almost 0% on their savings. So why should I be paying a big New York bank? Why should I be paying 5% when I can refinance?

The solution is to map out the money in these situations, and we can just start refinancing ourselves out. I would much rather refinance myself out of the jaws of death than turn around and tear up the assets in my parents' pension fund.

**McDonnell:** I see that. You have talked in the past about keeping the money local. What has happened over the past 30 years with the development of securitization for accessing capital through the global markets is the days of George Bailey have long since gone.

**Fitts:** Actually, I bank with 'George Bailey'. There are still a few George Baileys left.

**McDonnell:** And so do I, by the way; my local bank owns my loan. However, that is not so for most people. Their loans will be sold to the secondary market

to securitize them, but what actually happens is that this separates the borrower and the real lender. So, you have this middle man who is controlling everything. That makes it very, very difficult to solve a problem. It's very dehumanizing as well.

I can tell you right now that if people start talking to their mortgage servicing companies about the repayment plan option, this is going to feel very dehumanizing. Believe me; the stories are legendary in terms of what we've heard from our clients about their attempts to negotiate a fair-minded loan modification agreement through their mortgage services. Of course, they have been told many lies as well.

For example, they've been told, "The investor won't allow us to reduce the interest rates beyond a certain level or forgive principle or approve your loan modification," which is not true. The servicer has an incredible amount of latitude. If you do the net present value calculation, the investor would be better off if a reasonable repayment structure or forbearance loan modification were negotiated.

**Fitts:** Here is one concern, and this is why I get down to place by place: There are some places where the investor can make more if they foreclose and get the property, and the person who is aggregating real estate in that place gets what they want.

It's very important to connect. There may be no local game going on, and there may be no connection, but I think that in many cases – particularly after the election – there is definitely a local game going on.

I sent you an article in April about the shopping malls in the United States. One report was that only 25%, on average, of the shopping malls' rents are being received. So, I started reading all the different reports of the riots and how many shopping malls are being burned. I thought, "What a remarkable coincidence. They would rather get the insurance money than not getting their rents."

So, I think it is always important to look at what the local game that is occurring may be because there is a connection.

What we know is that if you are listening or reading this and you have exercised your forbearance period, you need to get your agreement clear if you can and if you know what you are ready to do. You need to record your conversations with your servicer; you need to document.

Marie has given us some great exhibits which we will have in the cyber links that you can look at. There are phone logs and how to do the calls. You need to document.

If you have an oral agreement, you have to write it up and send it in. Keep those documents, not just in your home, but you also need a copy offsite or in a digital device that you can put in your pocket and walk away. You do not need to lose them in a fire or a hurricane. You need to make sure that you understand this.

I had some people who have written to me since some of our conversations, and they say, “I went into forbearance, and I had no problem. I got a great deal. It was with Chase and they were wonderful, and there was no problem.”

I’m always wondering if it’s really a defense contractor that is being paid to write me that note. But they insist that it worked for them.

I’m not saying that it can’t work. We are willing for it to all work out.

I think I told you the last time we talked that I had this wonderful man – a marvelous human being – who I met in New Hampshire at my uncle’s funeral. He approached me and said, “I don’t know if you remember this, but ten years ago you talked to me. I have four kids, each with mortgages, and I was terribly worried about the stock market. They were paying high interest rates, and you told me to refinance my kids out. They are going to end up inheriting the money, so you told me to just keep it all in the family.”

He said, “I missed the big move in the market, but I slept like a dream and I have a steady income.”

**McDonnell:** That’s great!

**Fitts:** It was great.

If we are listening or reading this, let's say that we have done our two or three months of forbearance. We don't know what is going to happen this summer when these June and July dates roll around. How do we watch this? How do we stay on top of this?

**McDonnell:** In the documents that I prepared for you, I excerpted from Wells Fargo's website many of their frequently asked questions.

**Fitts:** That's great!

**McDonnell:** One of the questions is: Will I continue to receive my monthly mortgage statement?

The answer is: Yes. I can't wait to start seeing some of these monthly mortgage statements for borrowers who are on a forbearance plan because I know what it will look like. It is going to look like you're in default. It is going to look like you are two, three, four, five, or six months behind. You will see those missed payments stacking up with a total amount due.

**Fitts:** They can't hit you with late fees.

**McDonnell:** They cannot hit you with late fees.

**Fitts:** So make sure they don't if they try to.

**McDonnell:** Exactly. You need to monitor your credit as well because your payments will not be reported as late to the credit bureau.

**Fitts:** But what if they do it anyway? I know they're not supposed to, but that doesn't mean that it will work.

**McDonnell:** Here is what I anticipate is going to happen, which is why I want people to carefully document everything. I expect to see numerous violations.

Do you remember in the last servicing discussion that we had earlier this year, I

had a section on 'Rules of the Road'?

**Fitts:** Yes, I do.

**McDonnell:** My moniker is that your mortgage is the vehicle you drive on the road to home ownership, so you need to know the rules of the road.

There I discussed the key consumer protection statutes that everyone should be familiar with. What is going to happen, I expect, is, as people move past the forbearance period and into the repayment period, we will see many violations of the Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act.

This will also trigger state violations of consumer protection statutes that are on parallel as well.

For example, how do you know if you have a violation? You might not, but if I look at a collection letter and compare that to your mortgage statements and your forbearance agreement, I will be able to pick up on that.

This is why you want to keep your correspondence. One collection letter could be worth \$1,000 in statutory damages to you.

Too much human intervention is going to be required on the part of the mortgage servicing staff to assist borrowers to structure their repayment plan option. So, consumers should be carefully monitoring their monthly mortgage statements. As the months go by and you see those arrearages stacking up, you will have to think long and hard about when you perhaps abort or terminate early your forbearance agreement and get back on track with regular monthly mortgage payments.

Also, the servicers are suggesting that people who cannot make their full mortgage payment should send in payments that they can afford, but they don't explain what is going to happen to that money. Let me brief you on that.

A partial payment will be placed in, what is called, a suspense account or unapplied funds account. It's going to pool up there until there is enough

money to credit one full payment to the mortgage. So, for anyone who can continue to make some level of monthly mortgage payment because they are on unemployment so they are not receiving their full income, but they do have disposable income enough to make a partial payment, I would certainly encourage people to do that. You have to make a photocopy of your check. If you are making a payment online, download your receipt and keep it in an electronic file, print it out, and keep your paper file as well. Keep those proof of payments because it is these irregular payments that can very easily go missing.

**Fitts:** Oh yes, they can get lost.

**McDonnell:** Exactly. So, you need to make sure that you see those credits coming onto your monthly mortgage statements. You will see it being applied to either a suspense account or an unapplied funds account, and you can watch what is happening on your monthly mortgage statement.

The secret is to keep everything.

**Fitts:** So here is what I want everybody listening or reading this to do. If you have exercised forbearance under the CARES Act or somebody in your family, – your children or your grandchildren or your cousins or whatever – look at these documents. Marie has provided a complete explanation in writing. Make sure that anybody in your family or any friends you know who have done this have access to these materials. We always encourage you to share access with your family and friends in this kind of situation.

Make certain they have this information, and if they need to, listen or read the last *Solari* interview that we did on mortgage servicing. If somebody is originating a mortgage, listen or read the first one we did on origination. This is a very tricky time in the mortgage market, and you need to have the intellectual mastery – or someone you love or in your family needs the intellectual mastery – to ensure you navigate this right.

One of the things that you will see when you study and read Marie's case studies is that the people who know how to navigate know how to avoid some of the most frustrating times. You can get into situations where it is literally 'heart attack' time.

I am interviewing Dr. Thomas Cowan, and I just finished reading his book, *Human Heart, Cosmic Heart*. One thing that comes out again and again and again is that this kind of stress causes real physical problems, including heart attacks.

Some of your stories are unbelievable, but if you have a complicated, tricky situation, how do people find you, Marie? Frankly, I'm never going to originate another mortgage in my life without you checking it.

**McDonnell:** I'm happy to do it gratis.

**Fitts:** If you are in a 'box' already and you need to get out, I want them to know how to find you.

**McDonnell:** My company is McDonnell Property Analytics. You can google that, and you will find my website. By the way, we have a new website under development now, which have new features that I am very much looking forward to sharing with everyone. For example, we have created a mortgage IQ test, and I am also working on a mortgage affordability calculator so that you will be able to go onto my website and enter some information about your current mortgage and your current income, and that calculator will tell you whether your current loan is affordable given your current income or not.

These days, banks, mortgage brokers, and loan officers can use higher debt to income ratios to qualify you for a mortgage, but that doesn't mean that that is going to fit your comfort level in terms of affordability. So, we are going to have some tools on the website.

My company is McDonnell Property Analytics, and the telephone number is 774-323-0892. My email address is [Marie@McDonnellAnalytics.com](mailto:Marie@McDonnellAnalytics.com).

**Fitts:** I'm just going to say this: Don't go into court or owning a mortgage without this woman.

I have a one last quick question on refinancing: Rates have come down even more, so refinancing for some people may be attractive in this environment.

Have you seen a significant surge in refinancing's?

**McDonnell:** I do believe there will be, if not already, started for the reasons you've mentioned; rates are so low.

The difficulty here is that for anyone whose income has been negatively impacted by the lockdown, you might not have that option right now.

**Fitts:** You're going to 'paint yourself in a box'.

**McDonnell:** Exactly, it is a catch-22 situation. When you need the help the most, it might not be there for you. So, then you will be 'boxed' into negotiating a feasible repayment plan or a loan modification, which is going to get tricky. Some consumers have been able to negotiate that successfully on their own, but most people have not and they are desperate, so they will sign onto anything.

The servicers who are constructing those loan modification structures, putting the amortization out to 40 or 50 years to maximize the amount of interest that they are collecting or structuring in balloon payments on the maturity date; you really have to try to negotiate a better deal.

**Fitts:** I think what we are saying is that it takes plenty of time to master this kind of material and to put yourself in a position to do all your negotiations, but you need to do it. This is a very tricky, complex, and risky environment.

If you look at all the materials that you have provided, it can be done. It absolutely can be done, and it is going to make you much more money in many respects.

I hate to say this, but you can make more money keeping your mortgage from going bad than you can going out and getting a job. I think it pays to pay attention.

**McDonnell:** You are absolutely right.

**Fitts:** Marie McDonnell, is there anything else before we go? Any last words?

This is always the point when I ask you: Who has seen more fraud – you or me?

**McDonnell:** It's a close race.

I do want to mention one thing. I should send these decisions to you. First of all, what people should know is that if you have a mortgage dispute or you are in litigation to defend against a foreclosure, it is very, very difficult and very, very expensive to get through the litigation process all the way to trial. It rarely happens. Even in my 33-year career, I've only testified in a handful of trials.

If you have a case where you have properly asserted your claim and it becomes obvious to the lender or creditor or your servicer that you are going to win at trial, they will not allow that case to go to trial; they will settle with you. Of course, in the settlement, no one really gets everything that they want.

Fairly recently, I had a case in Green Bay, Wisconsin that went to trial. It's a great story, and might even deserve its own session. The case began as a foreclosure action. Wisconsin is a judicial foreclosure state, and Bank of America brought a foreclosure action against Tom and Michelle Juza.

Eventually in the litigation process, Bank of America filed out a motion for summary judgement, which is like a mini-trial. It's a very important milestone in the litigation process that can end the case right then and there based on the papers. The judge granted Bank of America's judgement of foreclosure. From there, the property was supposed to be sold at a sheriff's sale. It was sold once. The Juzas challenged that because the price was too low, and the judge agreed.

This was during the whole mortgage meltdown and financial crisis. In the meantime, the summary judgement was granted in February of 2010. So, the Juzas had to file bankruptcy – Chapter 7 liquidation bankruptcy. That held up selling the property a second time.

Eventually, it was sold, and sold back, this time, to Wells Fargo Bank as trustee for securitized trust. Of course, Bank of America within weeks of originating the loan, sold it to a Wall Street investment bank that securitized it. No one knew about this until I became involved.

So, the last piece of the litigation was for the judge to confirm the second sheriff's sale. It was at that point that Thomas and Michelle contacted me and asked me to look at their case.

To make a long story short, I conducted a financial forensics examination of the mortgage transaction and analyzed the securitization, and also an affidavit that Bank of America's representative wrote in support of the motion for summary judgement. I found that the judge, even in his summary judgement order, said that he relied upon that affidavit as the basis for his granting summary judgement.

Once I analyzed Bank of America's affidavit, I was able to 'tear it apart'. The numbers were wrong; they had presented a note that had a forged endorsement on it, and I was able to demonstrate that the party who allegedly endorsed the note never worked for Bank of America at the time. So, I wrote this affidavit and explained all these defects in how the foreclosure was brought; I explained what was wrong with the affidavit. It was so powerful that I actually added a section on fraud upon the court and laid out how the judge could see the fraud.

Once I finished the affidavit, I contacted the Juza's attorney, Reid Peterson. I said, "Reid, yes, you should definitely file my affidavit in support of your objection to the confirmation of the sheriff's sale, but I would suggest that you also file a motion to vacate the judgement of foreclosure due to the fraud upon the court that I have discovered. As a remedy, ask for the case to be dismissed with prejudice."

Fast forward to the evidentiary hearing, which happened February 6, 2017. This was seven years past the judgement of foreclosure when the hearing went forward. Tom Juza was on the stand for about 20 minutes. I was on the stand for about two and a half hours. The judge was absolutely fascinated with what I had found. He directly asked me many questions.

Interestingly, Wells Fargo's attorneys thought that I was irrelevant; they did not cross-examine me, they never challenged me, they never brought in another expert witness to rebut my testimony. They were confident that their seven-year-old judgement of foreclosure would stand.

The case wound up with the closing arguments being made, and astonishingly, the judge stood up from the bench and ruled right then and there. He said, “I don’t know about the note. I don’t know if it’s enforceable or if Wells Fargo owns it. I’m not dealing with a note. But I am going to declare that this mortgage is void because I find that there was substantial fraud upon the court, and you are not going to take this family’s home.”

With that, he issued his orders, and the effect was, of course, the \$900,000 mortgage ‘went up in smoke’. Since the Juzas had filed a Chapter 7 liquidation bankruptcy years earlier, they had no personal obligation on the note. So basically, Wells Fargo, the securitization trust, ended up with nothing. Wells Fargo appealed that case, and it was decided by the Wisconsin Court of Appeals on January 25<sup>th</sup> of last year. That is how long the litigation process and appeals process took. They upheld the trial court’s judgement.

My name is all over that decision. It is the best calling card or reference that I could ever have hoped to have had. It’s an incredible story of what it actually takes for a consumer to properly raise their rights. These banks are just ponderous.

Talk about *The Art of War*! What they do is try to exhaust the consumer’s resources.

The long and short of that story is that litigation of these mortgage disputes is very costly in terms of time and money. The chances of success are so small that it is really best to try to tackle these problems as early on as possible and neutralize the situation.

In any event, that was the case story..

**Fitts:** I have found that if you are prepared to play and win at paperwork warfare, they are very busy. If they see that you have your ‘ducks lined up’ and are documenting and you are on top of it, there is usually a means to get your way.

I think it works. But if you think you are going to make this better by procrastination, you are not. You have to stay on top of it.

**McDonnell:** Absolutely ‘words of wisdom’. You cannot be an ostrich and have your head in the sand on these issues. You have to buck it up as early as possible and act proactively with the situation and jot down everything.

**Fitts:** It’s hard because it’s depressing. I had a very successful company, and had a million dollar a month cash flow. I was saving at astonishing rates. If you look at my business and personal overhead, I was ‘socking away’ a couple hundred thousand dollars a month.

We were building all kinds of software tools, and we could expense that right away, but suddenly I woke up, and I had all cash flow and credit cut off, but the expenses hadn’t stopped. I had to get from \$100,000 a month of business and personal expenses down to \$2,000 a month while I was handling twelve tracks of litigation and 18 audits of investigation. So I know how hard it is.

The way through it is dead center. It’s war, but it’s a war you can win.

Marie McDonnell, you are great, and you are inspiring! I feel ready to go out and take on the world.

**McDonnell:** Thank you, Catherine, and thank you for the opportunity.

**Fitts:** I appreciate this. I know that many people are going to be hurting from this. So, if you have any ideas as you start to deal with the flow of people coming to you as a result of the CARES Act, any ideas that you have on how we can help our subscribers protect themselves and navigate this situation, please keep us posted. We will do the same.

**McDonnell:** We definitely will do that. I expect in the next couple of months, certainly by the fall, we are going to have a very good handle on what is going on out there and what needs to be done.

One last thing, and I think I talked about this a little in the servicing discussion, is that consumers have a very, very powerful right under the Real Estate Settlement Procedures Act. It is to send out, what we call, Requests for Information and Notices of Error. We are finding huge success with that.

We handle that process for our clients and document it very carefully, sending the correspondence out by certified mail. Stephanie keeps a chart of potential violations. If we can stack up three or more violations of the Real Estate Settlement Procedures Act, that affords consumers, what is called, a Private Right of Action that would enable them in a successful action to recover legal fees, costs, actual and statutory damages.

Here again, we won't know if those violations are queueing up unless people have all their paperwork in order. Again, the big mantra lesson here is to organize and keep your paperwork. It is like panning for gold.

**Fitts:** Exactly. Marie, thank you.

**McDonnell:** Catherine, we will keep in touch.

**Fitts:** Thank you so much. You have a wonderful day.

**McDonnell:** You, too, and stay well.

## **MODIFICATION**

Transcripts are not always verbatim. Modifications are sometimes made to improve clarity, usefulness and readability, while staying true to the original intent.

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